



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 21, 2015

**Southwest Regional Counsel**

Secretary of the Port Authority of New York & New Jersey  
ATTN: FOI Administrator  
The Port Authority of New York and New Jersey  
Corporate Offices  
4 World Trade Center  
150 Greenwich Street  
New York, NY 10007

Re: Appeal of Response to Freedom of Information Request, Reference No. 16257

To the Secretary of the Port Authority of New York & New Jersey:

This is an appeal ("Appeal") of the Port Authority of New York & New Jersey's ("Authority") response ("Response") to the Pennsylvania Department of Environmental Protection's ("PaDEP") request for records dated July 30, 2015, Request Reference No. 16257 ("Request"). By filing this Appeal, PaDEP seeks a more thorough review of the Authority's records, including the review of the records of its entities that use railroad ties and utility poles.

Pursuant to the Authority's Resolution of October 22, 2014 ("Resolution") and the laws cited therein, this Appeal is properly filed with your office and should be forwarded to the Port Authority Freedom of Information Review Board.

The subject of this Appeal, the Request, sought these records:

All printed, electronic, and other documents referring to transportation or disposal services for railroad ties, utility poles, or other wood waste, provided by Terry Brenneman, L&K Industries, Clearview Farms, Tub Mill Farms to the Authority, including contracts, orders, specifications, bid documentation, solicitations, correspondence, transportation receipts and other documentation referring to disposal and payment receipts and documentation referring to payment for the years 1999-2013.

(Exhibit A, Request.)

The Authority's Response to the Request stated the following:

"we have searched our files and found no documents responsive to the request."

(Exhibit B, Response.) The Response did not explain whether the Authority searched the files of its operated entities that use railroad ties and utility poles, such as Port Authority Trans-Hudson ("PATH").

September 21, 2015

The Pennsylvania Department of Environmental Protection appeals the Response because the documents attached to this Appeal as Exhibit C show that the Authority, through PATH, did business with Terry Brenneman and L&K Industries, Inc. (Exhibit C, Receipts.) Given this past business history with a person and a corporation set forth in the Request, it is probable that the Authority or its operated entities have records responsive to the Request.

The prior business relationships between the parties listed in the Request and PATH give good cause for the Port Authority Freedom of Information Review Board to require the Authority to more thoroughly review its files and the files of its operated entity, PATH, and then more fully explain whether the Authority and its operated entity, PATH, or other entities under its operational control that use railroad ties or utility poles, have records responsive to the Request.

If you should require any additional information, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Gearhart", with a long horizontal line extending to the right.

Bruce E. Gearhart  
Investigator

Enclosures:

- Exhibit A – July 30, 2015 Request
- Exhibit B – September 1, 2015 Response
- Exhibit C – Business Receipts

- c: Michael Forbeck, Environmental Program Manager, DEP Southwest Regional Office (w/ enclosures)  
Scott Swarm, Environmental Group Manager, DEP Southwest Regional Office (w/ enclosures)  
Mick Plainsek, Solid Waste Supervisor, DEP New Stanton Office (w/ enclosures)  
John Herman, Regional Counsel, DEP Southwest Regional Office (w/ enclosures)  
Rick Watling, Assistant Counsel, DEP Southwest Regional Office (w/ enclosures)

# **EXHIBIT A**

FOI #16257



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 30, 2015

**Southwest Regional Counsel**

The Secretary  
The Port Authority of New York and New Jersey  
Corporate Offices  
4 World Trade Center  
150 Greenwich Street  
New York, NY 10007

Attention: FOI Administrator

Re: FOI Request No. 15565

Dear Secretary:

The Pennsylvania Department of Environmental Protection is requesting the following under Authority's Freedom of Information policy:

All printed, electronic, and other documents referring to transportation or disposal services for railroad ties, utility poles, or other wood waste, provided by Terry Brenneman, L&K Industries, Clearview Farms, and Tub Mill Farms to the Authority, including contracts, orders, specifications, bid documentation, solicitations, correspondence, transportation receipts and other documentation referring to disposal and payment receipts and documentation referring to payment for the years 1999-2013.

Please contact me at the above address or number should you have any further questions regarding this request.

Sincerely,

Bruce E. Gearhart  
Investigator

08-20-15A11:08 RCVD

# **EXHIBIT B**

**THE PORT AUTHORITY OF NY & NJ**

*FOI Administrator*

September 1, 2015

Mr. Bruce E. Gearhart  
Commonwealth of Pennsylvania,  
Governor's Office of General Counsel  
Southwest Regional Office, 400 Waterfront Drive  
Pittsburgh, PA 15222

Re: Freedom of Information Reference No. 16257

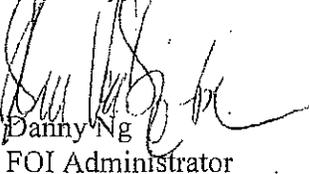
Dear Mr. Gearhart:

This is a response to your July 30, 2015 request, which has been processed under the Port Authority's Freedom of Information Code, copy enclosed, for copies of "All printed, electronic, and other documents referring to transportation or disposal services for railroad ties, utility poles, or other wood waste, provided by Terry Brenneman, L&K Industries, Clearview Farms, and Tub Mill Farms to the Authority, including contracts, orders, specifications, bid documentation, solicitations, correspondence, transportation receipts and other documentation referring to disposal an payment receipts and documentation referring to payment for the years 1999-2013."

Please be advised that we have searched our files and found no documents responsive to the request.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Sincerely,



Danny Ng  
FOI Administrator

Enclosure

4 World Trade Center, 18th Floor  
150 Greenwich Street  
New York, NY 10007  
T: 212 435 7348 F: 212 435 7555

# EXHIBIT C



L & K INDUSTRIES, INC.  
RD1, Box 121  
Salisbury, Pennsylvania 15558

PHONE  
(814) 662-2585  
(814) 634-8527 Message

INVOICE NUMBER  
B/L NUMBER  
DATE: March 25, 1991

ACCOUNT - PICKUP:  
 L & K  
 Koppers  
 Other

IN TRANSIT:  
 Via L & K  
 Koppers  
 Other L & K

AT DELIVERY:  
 L & K  
 Koppers  
 Other

DESCRIPTION OF MATERIAL

1 7/8 Long P R Tin

POLES  
 TIES

PICKED - UP

# pc. 343

NJ Path  
C Yard  
Jonestown City, NJ

# 394

FROM

CAR

YARD

PLANT

CUSTOMER

NET WT.

ACCEPTED BY

TO

CAR

YARD

PLANT

CUSTOMER

CO-GEN

PLANT

DELIVERED TO

Koppers Industries  
C Landstr. Plant  
Montgomery PA

MAR 29 1991

Delivered By:

B. D...

TRUCK  
NUMBER 555

ACCEPTED BY

[Signature]

FINANCE CHARGE is computed on a periodic rate of 1 1/2 percent per month, which is an annual percentage rate of 18 percent on any previous balance not paid within 30 days. A 50 cents minimum charge per month.

LAUREL QUICK PRINT • SOMERSET, PA • (814) 446-7177

Koppers Industries, Inc.  
430 Seventh Avenue  
Pittsburgh, Pa. 15219-1800

# KOPPERS INDUSTRIES

SALES OFFICE	SALESMAN	INSIDE SALESPERSON	CLASS OF TRADE
ORIGIN SPLG	DEST SPLG	OTX	IDTX
CUSTOMER CODE	CUSTOMER FILE	ORDER NO.	FREIGHT LIABILITY
INVOICE NUMBER	INVOICE DATE	CUSTOMER PURCHASE ORDER NUMBER	CUSTOMER CONTRACT - REQUISITION NUMBER

<b>SOLD TO:</b>	<b>SHIP TO:</b>
PORT AUTH. TRANS-HUDSON CORP. ATTN: MR. EDWARD C. PERARA 8TH FLOOR, ONE PATH PLAZA JERSEY CITY, NJ 07306	RECOVERY SERVICES FOR: PATH "C" YARD, FT. OF ACADEMY STREET, JERSEY CITY, NJ AT: MUNCY, PA 17758

SHIPPED FROM	DATE SHIPPED	DELIVERY TICKET - B/L NO.	ROUTING
MONTGOMERY, PA	9/23/94	3357	TERRY BRENNEMAN
TITLE PASSES F.O.B. SHIPPING POINT	FREIGHT TERMS	FRT ALLOWED DEST	FREIGHT BASIS
	NET 30 DAYS		PREPAID
PAYMENT TERMS	CAR OR VEHICLE INITIALS AND NUMBER		
	3358		

MATERIAL DESCRIPTION	Commodity	PRICE	UNIT	QUANTITY SHIPPED	AMOUNT
THIS IS TO CERTIFY THAT THE FOLLOWING USED WOOD MATERIAL HAS BEEN RECYCLED FOR ENERGY.					
#3357 285 PCS		2137.5000	TN	21	2137.50
#3358 297 PCS		2227.5000	TN	22	2227.50
<b>SUBTOTAL</b>				<b>43</b>	<b>4365.00</b>

4034-016 1211.25 10/24/94  
 017 1262.25 10/24/94

TOTAL ▶ 4365.00

L & K INDUSTRIES, INC.  
RD 1, Box 12  
Sallsbury, Pennsylvania 15558

PHONE  
(814) 662-2585  
(814) 634-8527 Message

INVOICE NUMBER  
B/L NUMBER 7757  
DATE: 9/22 - 10/24 ✓  
758-8734

ACCOUNT - PICKUP:  
 L & K  
 Koppers  
 Other

IN TRANSIT:  
 Via L & K  
 Koppers  
 Other

AT DELIVERY:  
 L & K  
 Koppers  
 Other

DESCRIPTION OF MATERIAL Used Tire  POLES  TIES

PICKED - UP  
# pc. 285  
New Jersey Path  
Yard C  
Jersey City, NJ

DELIVERED TO  
Koppers Industries Inc  
Co - Coanetant # 211.25  
Montgomery, PA

FROM TO  
 CAR  CAR  
 YARD  YARD  
 PLANT  PLANT  
 CUSTOMER  CUSTOMER  
 NET WT. 41000  CO. GEN PLANT  
20.50

Delivered By: T. Brennan TRUCK NUMBER 50

ACCEPTED BY: Bill Smith

FINANCE CHARGE is computed on a periodic rate of 1 1/2 percent per month, which is an annual percentage rate of 18 percent on any previous balance not paid within 30 days. A 50 cents minimum charge per month.

# 2265.75  
2137.50  
L & K QUICK PRINT - SOMERSET, PA • (814) 445-2777

DATE 9/9/94

SE<sup>TR</sup> BL<sup>R</sup> Path of N.J.

ADDRESS \_\_\_\_\_

CH 69 8:26 A.M. 09/09/94

CITY Jersey City STATE N.J. ZIP \_\_\_\_\_

COMMODITY X-Ties & S.W. Ties

G+076840 1b GR LIVE

PRICE \_\_\_\_\_

REMARKS L&K Incl

CH 69 8:26 A.M. 09/09/94

Supplied Banding Int 1313.25

9:02 A.M. 09/09/94

309 pcs

G+076840 1b TA MEM.  
T+037040 1b TA LIVE

DRIVER  ON  OFF \_\_\_\_\_

N+039800 1b

WEIGHER m.k

19.90  
Transact  
1313.25  
10-13-94

#11.94

**THE PORT AUTHORITY OF NY & NJ**

FOI Administrator

December 18, 2015

Mr. Bruce E. Gearhart  
Commonwealth of Pennsylvania,  
Governor's Office of General Counsel  
Southwest Regional Office, 400 Waterfront Drive  
Pittsburgh, PA 15222

Re: Appeal of Freedom of Information No. 16257

Dear Mr. Gearhart:

This is in furtherance of our November 20, 2015 letter transmitting the decision of the Port Authority Freedom of Information Review Board (the "FIRB") in connection with the September 21, 2015 appeal of your July 30, 2015 Freedom of Information request.

The FIRB unanimously denied the appeal because as set forth in the response from Freedom of Information Administrator Danny Ng, dated September 1, 2015, the Port Authority does not possess any documents responsive to the request.

The FIRB further unanimously determined that within 30 days the Office of Secretary shall detail in writing and certify the: (1) the search undertaken to satisfy the request; (2) a statement of the document retention policy(ies) at issue; and (3) the last date on which documents that may have been responsive to the request were destroyed, if applicable.

Attached is a certification covering the areas outlined in the FIRB decision.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Sincerely,



Danny Ng  
FOI Administrator

Enclosure

*4 World Trade Center, 18th Floor  
150 Greenwich Street  
New York, NY 10007  
T: 212 435 3642 F: 212 435 7555*

**FREEDOM OF INFORMATION**  
**CERTIFICATION OF DILIGENT SEARCH FOR**  
**REQUESTED DOCUMENTS**

I, Danny Ng, Freedom of Information Officer in the Office of the Secretary of The Port Authority of New York and New Jersey hereby certify that:

1. With regard to Freedom of Information Request No. 16257, a diligent search was conducted by Port Authority staff to locate the requested records of all printed, electronic, and other documents referring to transportation or disposal services for railroad ties, utility poles, or other wood waste, provided by Terry Brenneman, L&K Industries, Clearview Farms, and Tub Mill Farms to the Authority, including contracts, orders, specifications, bid documentation, solicitations, correspondence, transportation receipts and other documentation referring to disposal an payment receipts and documentation referring to payment for the years 1999-2013. This search was conducted by FOI Coordinators of PATH and the Procurement Department, which are the designated owners of the requested records pursuant to the Port Authority's Records Retention Schedule. On October 15, 2015, the PATH Assistant Superintendent, conducted a complete and thorough search of PATH's database of past contracts and found no documents responsive to Freedom of Information Request No. 16257. On October 15, 2015, the Integrity, Compliance and Contract Review Manager of the Procurement Department conducted a complete and thorough search of the Procurement Department's database of past contracts and found no documents responsive to Freedom of Information Request No. 16257.
  
2. The Port Authority's Records Retention Schedule provides for a retention period of 7 years for purchase orders and 10 years for operating and maintenance contracts. A diligent search of our files was conducted by the Office of the Secretary, and no records were found indicating that the requested records had been destroyed pursuant to the Port Authority's Record Retention Schedule.

This certification is provided by me as Freedom of Information Officer of and on behalf of The Port Authority of New York and New Jersey this 18<sup>th</sup> day of December, 2015.



Danny Ng  
Freedom of Information Officer  
The Port Authority of New York and New Jersey